IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1354 OF 1997

IN

SUIT NO. 2878 OF 1997

N.K. Kubal & Ors. .. Plaintiffs.

vs.

S. K. Kubal & Ors. .. Defendants.

Mr. P.C. Karande for plaintiffs.

Mr. R.V. Govilkar a/w. Lalit Doshi

for defendants.

CORAM : S.U.KAMDAR, J.

DATE : 1st September, 2005.

P.C.

. The learned counsel appearing for the defendant has raised the issue of maintainability of the present suit. He has pointed out that the suit as framed must lie before the Co-operative Court under Section 28 of the Bombay Rents, Hotel ad Lodging House Rates Control Act, 1947 since replaced by Section 33 of the Maharashtra Rent Control Act, 1999. The learned counsel has contended that in view of the provisions of the said section the suit which is claiming a right of a tenancy as a legal

heir of the deceased tenant Kaushini V. Kubal cannot be entertained in this Court. To appreciate the aforesaid, it is necessary that section 33 of the Maharashtra Rent Control Act, 1999 are reproduced hereinunder:

> S. 33. Jurisdiction of Courts.-
>
> (1) Notwithstanding anything contained in, any law for the time being in fore, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction.
>
> (a) in Brihan Mumbai, the Court of Small Causes, Mumbai
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> (b) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887 (IX of 1887), such Court, and
>
> (c) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if

there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorised by it or the Competent Authority); and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question.

(2) (a) Notwithstanding anything contained in clause (b) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Cause Courts Act, 1887 (IX of 1887), and transfer the same for trial or disposal to the Court

of the Civil Judge (Senior Division) having ordinary jurisdiction in such area.

(b) Where any suit, proceeding or application has been withdrawn under clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit, proceeding or application, as the case may be, may either re-try it or proceed from the stage at which it was withdrawn.

(c) The Curt of the Civil Judge tying any suit, proceeding or application withdrawn under clause (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, be deemed to be the Court of Small Causes."

My attention is drawn by the learned counsel for the plaintiff to Section 5 of the Maharashtra Housing and Area Development Act, 1966. The said Section 5 of the said Act reads as under:-

"5. The rent Act or any law corresponding thereto for the time being in force in any

area to which this Act extends,-

(a) shall not apply to any land or building belonging to, or vesting in, the Authority under or for the purpose of this Act;

(b) shall not apply as against the Authority to any tenancy, licence or other like relationship created by any existing Board or the Authority in respect of any such land or building;

(c) but shall apply to any land or building let, or given on licence, to any existing Board or the Authority."

In the present case it is not in dispute that the building in the present case had collapsed and in 1984 MHADA took over the said building. The defendant no. 1 who has filed an affidavit in reply has annexed Exhibit-6 to the said affidavit in rely the rent receipt issued by Grih Nirman Bhavan, Bandra (East), Mumbai 400 050. The said receipt is for rent of a sum of Rs. 498/- Thus, it is clear that the property vest in the Housing Board and in view of Section 5 sub section (a) of the MHADA Act, 1976 the provisions of the Rent Control Act does not apply to the properties which is land or building belonging to or vesting in the authority under the

said Act.

2. However, the learned counsel for the defendant has put an alternative plea, namely, that the nature of the relief sought in the present suit namely, claiming the tenancy as a legal heir of the deceased would fall under the provisions of section 33 of the Maharashtra Rent Control Act,1999. It is his contention that even if the land or the building vests in MHADA still the dispute between the plaintiff and defendant ought to be agitated under Section 33 of the Maharashtra Rent Control Act, 1999. In my opinion, the aforesaid submission of the learned counsel is devoid of any merit. Once the land and building falls within the purview of section 5 of the MHADA Act, the provisions of Rent Act does not apply to the whole of the land and building. The dispute between the parties in respect of any of the premiss situated in the said MHADA building would be outside the jurisdiction of the Rent Court and Section 33 of the Maharashtra Rent Control Act, 1999 has no application. Furthermore, Section 33 sub section (1) recites that the rent court shall have jurisdiction to entertain and try the suit if it falls in the category of a dispute between the landlord and tenant relating to the recovery of rent or compensation or possession and to decide any application made under the said Maharashtra Rent Control Act. Once it is admitted

that the landlord in the present case is MHADA then the dispute between the plaintiff and the defendant in the present case does not fall in the category of a dispute between the landlord and the tenant relating to recovery of possession or to decide any application under this Act. For that reason also I am of the opinion that this Court has jurisdiction and the provisions of section 33 of the Maharashtra Rent Control Act, 1999 have no application. In that view of the matter, I hold that this Court has jurisdiction to entertain and try the present suit. However, Mr. Govilkar, Advocate, without prejudice to his contentions about maintainability of the suit states that the Court Receiver can be appointed subject to the condition that the bid for the agency of the said premises should be restricted amongst the parties to the present suit and no outsider should be brought in. The highest bidder between the plaintiffs and the defendants can be appointed as an agent of the receiver on such terms and conditions as the Court Receiver may fix. Accordingly, the following order is passed:-

> The Court Receiver, High Court, Bombay is appointed as Receiver in respect of the property but the Court Receiver will take actual, physical possession of the said property. The Court Receiver will invite bids from the parties to the suit

proceedings and appoint highest bidder as agent of the Court Receiver on usual terms and conditions. The amount so received towards royalty charges will be retained by the Receiver and will abide by the final hearing and disposal of the suit. For the purpose of withdrawal of the money, parties are at liberty to make further application.

3. Motion disposed off accordingly. No order as to costs.